

## **REMARKS**

In the Office Action, the Examiner rejects all pending claims, Claims 1, 3-14, and 42-54. Applicant thanks the Examiner with appreciation for the careful consideration and examination. No new matter is believed introduced by this submission.

Applicant files this response solely to facilitate prosecution. As such, Applicant reserves the right to pursue claims of broader or similar scope as originally filed in this application, a continuation application, or other application after allowance of the present application. Applicant does not concede that the current or past rejections are correct and reserves the right to challenge such rejections later in prosecution or on appeal. Any amendment, argument, or claim cancellation is not to be construed as abandonment or disclaimer of subject matter.

After entry of this Response, Claims 1, 3-14, 42-54, and 100-114 are pending. Applicants believe that the claims are in allowable condition and respectfully request reconsideration of the claims in light of the following remarks.

### **I. All Pending Claims Are Patentable Under 35 U.S.C. § 103**

The Examiner rejects the pending claims under § 103 due to a combination of Halton (USPN 6,697,346) and DuPont (USPN 5,729,542). Applicant respectfully traverses the rejection because the Examiner has not set forth a prima facie case of obviousness.

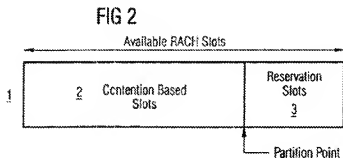
Controlling precedence establishes stringent criteria to support an obviousness rejection. When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003). Moreover, “*there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” *KSR Intl. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (emphasis added).

Here, Applicant respectfully submits that the pending claims are patentable over the Halton-DuPont combination for at least several reasons. As one example, Applicant respectfully submits that the Examiner has not properly characterized Halton or DuPont and, as a result, has failed to properly determine the scope and content of the references and ascertain differences between the claims and the applied reference combination.

**A. Halton Does Not Support The Examiner's Rejection**

Claim 1 currently recites a method of accessing a wireless multiple-access communication system utilizing at least two contention-based random access channels (see claim language for exact claim language). Halton does not teach or suggest such features.

Halton is directed to an automatic determination point for a random access channel partitioning scheme. As part of Halton's scheme (as shown below), a "random access time window 1 is partitioned into a first section 2 and a second section 3. The first section 2 contains contention based random access slots and the second section 3 contains reservation based random access slots." (Halton, 7:36-41). In other words, Halton's system includes contention-based slots paired with reservation-based slots. This is different than that in Claim 1.



Halton's description further confirms that the combination does not render Claim 1 obvious. Indeed, when discussing Figures 2-3, Halton states that each figure shows dynamically adjusted random access

channels that include a contention-based portion and a reservation-based channel. Clearly this language expresses that contention-based is not the same as reservation based. Moreover, Halton states that the non-contention, reservation based slots "can be allocated to mobile stations . . . which periodically on a regular basis wish to transfer uplink packet data or make a request for channel reservations to transfer data." (Halton, 7:44-50). This explanation confirms that Halton's system – pairing contention-based slots with reservation-based slots – does not teach or fairly suggest Claim 1's at least two contention-based random access channels.

Based on the undersigned's reading of the Examiner's Office Action, it appears that the Examiner's interpretation of Halton is in line with the above-discussed comments despite the rejection. When discussing Halton on page 3 of the Office Action, the Examiner states: "Halton, as shown in Fig. 2, discloses a random access time window partitioned into *random access slots* and *reservation based random access slots*. Further, Halton discloses that when *contention based use* is not in demand, more capacity can be given to *reserved resources*." (emphasis added). From this description, it seems that the Examiner understands Halton's RACH to include a "contention based" portion and a "reserved resources" portion. Since Halton explains

that a “reserved resources” portion is not a contention-based portion, then Halton cannot teach or fairly suggest Claim 1’s method of utilizing at least two contention-based random access channels in various parts of the claim.

Given that Halton fails to teach Claim 1’s utilization of at least two contention-based random access channels, the applied combination depends on DuPont. Applicant respectfully submits that DuPont does not cure Halton’s deficiencies (as discussed above) and the Examiner does not assert that DuPont does. As a result, Applicant believes that Claim 1 and its dependent claims are allowable over the applied combination. For at least the above reasons, all pending claims are believed patentable over the Halton-DuPont combination.

#### **B. DuPont Does Not Support The Examiner’s Rejection**

There are yet additional reasons why the Halton-DuPont combination does not support the §103 rejection. The Examiner cites to DuPont (6:45-7:8) as teaching Claim 1’s feature that “a second random access channel [can be] used by registered and unregistered terminals for system access.” But the cited portion of DuPont does not support the Examiner’s assertion.

Indeed, DuPont describes that an access channel can have “one group of bursts [] for expedited access requests and the other [] for both regular and expedited access requests.” (6:58-60). DuPont goes on to say that a “base station preferably keeps track of the current estimate of high priority users  $v_{hi}$  and regular ready users  $v_{lo}$ .” (6:65-67). By doing this, DuPont’s base station can send out instructions to users as to when to users can send access requests to the base station. (7:1-8). DuPont’s use of the term “users” confirms that this description describes only situations where terminals are registered and does not account for situations where terminals are not registered. Why else would DuPont call them users? As a result, Applicant respectfully submits that DuPont does not support the Examiner’s rejection.

Given that DuPont fails to teach Claim 1’s feature that “a second random access channel [can be] used by registered and unregistered terminals for system access,” the applied combination depends on Halton. Applicant respectfully submits that Halton does not cure DuPont’s deficiencies (as discussed above) and the Examiner does not assert that Halton does. As a result, Applicant believes that Claim 1 and its dependent claims are allowable over the applied combination. For at least the above reasons, all pending claims are believed patentable over the Halton-DuPont combination.

### **C. The Alleged Motivation To Modify Halton with DuPont Is Not Sufficient**

As KSR makes clear, the legal conclusion of obviousness must be supported by *some articulated reasoning* with some rational underpinning. Here, Applicant believes that the Examiner's asserted reasoning for combining Halton and DuPont is not legally sufficient. The Examiner's reason for combining Halton and DuPont is believed insufficient because (a) DuPont does not suggest the feature asserted by the Examiner; and (b) the alleged benefits of the combination are not explained. These are addressed in turn below.

As explained above, DuPont does not suggest "a second random access channel [that can be] used by registered and unregistered terminals for system access." Since the Examiner's reasoning depends on this erroneous assertion, Applicant believes the legal conclusion of obviousness to be legally deficient as it is not supported by any rational underpinning.

In addition, when combining Halton and DuPont, the Examiner states that persons of ordinary skill in the art would do so "in order to dynamically adapt the random access time window resources to changing requirements and an optimal utilization of the resources." Other than this statement, the Examiner does not state how the modification provides the alleged benefit. As the BPAI has made clear, conclusory allegations without any explanation of the alleged benefit cannot properly support an obviousness rejection. *See Ex parte Rykowski*, BPAI Appeal No. 2009-003868, pp. 6-7 (September 17, 2010) (reversing obviousness rejection because the Examiner did not explain how the combination produced the alleged benefit which served as the Examiner's reason to combine).

Thus, for at least the above reasons all pending claims are believed allowable over the pending claims. Withdrawal of the claim rejection is respectfully requested.

### **II. New Claims 100-114**

Applicant adds new Claims 100-114 directed to additional embodiments of the invention. These claims are supported at least by Figures 1-9 and Paragraphs 10, 33-44, and 60-87 of the Application (cites made to published application, US 2004/0156328). These claims are believed allowable over the reference of record for at least the reasons discussed above. Favorable consideration is respectfully requested.

### **III. Supplemental IDS Submission**

Soon after submitting this response, Applicant will file another IDS in compliance with 37 C.F.R. § 1.56. As mentioned in the previous IDS submission, this application is related to a number of other pending cases, including US and international applications. While Applicant believes the pending claims are allowable, Applicant nonetheless will provide these additional references out of an abundance of caution following USPTO guidance as stated in the MPEP.

### **IV. Fees**

Applicant files this Response with three months of the Office Action and with no new claims beyond those already paid for. Thus, no fees are believed due. The Commissioner is authorized, however, to charge any fees deemed due to Deposit Account 17-0026 for full acceptance of this submission and to keep this application pending.

### **V. Conclusion**

This Response is believed to be a complete response to the Office Action. Applicant respectfully asserts that the pending claims are in condition for allowance and respectfully requests passing of this case in due course of USPTO business.

If the Examiner believes that any issues associated with the Application can be resolved over the phone or by Examiner's amendment, a telephone call to Hunter Yancey at 858-845-7534 is respectfully requested.

Respectfully submitted,

QUALCOMM, INC.

/jameshuntYanceyjr53809/  
James H. "Hunter" Yancey, Jr.  
USPTO Reg. No. 53,809

QUALCOMM Patent Group  
5775 Morehouse Drive  
San Diego, CA 92121  
P: 858-845-7534  
F: 858-845-3986  
E: hunter@qualcomm.com  
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